IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

MONDAY, THE 1ST OCTOBER 2007 / 9TH ASWINA 1929

WP(C).No. 18751 of 2007(G)

PETITIONER:

D.K.SUDHEER, S/O. DIVAKARAN,
RESIDING AT KAMALALAYAM, CHITHARA P.O., CHITHARA VILLAGE, KOLLAM DISTRICT.

BY ADV. SRI.V.N.ACHUTHA KURUP (SR.).

RESPONDENTS:

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1. **THE GOVERNMENT OF KERALA,**
   REPRESENTED BY THE SECRETARY TO GOVERNMENT,
   FOREST AND WILD LIFE, GOVERNMENT SECRETARIAT,
   THIRUVANANTHAPURAM.

2. **CHIEF CONSERVATOR OF FORESTS (VIGILANCE)**
   FOREST HEAD QUARTERS, VAZHUTHAVAUD,
   THIRUVANANTHAPURAM.

3. **CONSERVATOR OF FORESTS (I & E),**
   KOTTAYAM.

4. **CONSERVATOR OF FORESTS,**
   SOUTHERN CIRCLE, KOLLAM.

5. **DIVISIONAL FOREST OFFICER,**
   TIMBER SALES DIVISION, RAJEEV GANDHI NAGAR,
   VATTIYOORCAVU, THIRUVANANTHAPURAM - 13.

6. **DEPOT OFFICER,**
   GOVERNMENT TIMBER DEPOT, ACHENCOVIL,
   KOLLAM DISTRICT.

W.P.(C). NO.18751/2007:

7. KERALA FOREST RESEARCH INSTITUTE,
PEECHI, REPRESENTED BY ITS DIRECTOR.

BY SPL.GOVERNMENT PLEADER (FOREST) SRI. RENJITH THAMPAN.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 28/09//2007,THE COURT ON 01/10/2007 DELIVERED THE FOLLOWING:

W.P.(C). NO.18751/2007:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P.1: COPY OF THE GAZETTE NOTIFICATION PUBLISHED BY THE CHIEF CONSERVATOR OF FORESTS (PROTECTION) TRIVANDRUM.

EXT.P.2: COPY OF THE RECEIPT DTD. 24/04/2007 ISSUED BY THE OFFICE OF THE DIVISIONAL FOREST OFFICE, THIRUVANANTHAPURAM.

EXT.P.3: COPY OF THE CHALLAN RECEIPT DTD. 02/05/2007 ISSUED BY THE TREASURY OFFICER FOR RS. 3,35,767/-.

EXT.P.4: COPY OF THE ORDER DTD. 05/06/2007 ISSUED BY THE DEPOT OFFICER, GOVT. TIMBER DEPOT, ACHENCOIL TO THE PETITIONER.

EXT.P.5: COPY OF THE ORDER DTD. 14/05/2007 ISSUED BY THE SECRETARY, FOREST DEPARTMENT TO THE R.2.

EXT.P.6: COPY OF THE REPORT DTD. 30/04/2007 SENT BY THE R.2. TO THE SECRETARY, FOREST DEPARTMENT.

EXT.P.7: COPY OF THE EXTRACT OF THE DIARY KEPT IN THE CONTROL ROOM OF THE R.2. ISSUED TO THE PETITIONER DT. 26/04/07.

EXT.P.8: COPY OF THE LETTER DTD. 27/04/2007 SENT BY THE DIVISIONAL FOREST OFFICER TO THE FOREST CONSERVATOR.

EXT.P.9: COPY OF THE CIRCULAR NO. 1/80 SHOWING THE PRINCIPLES TO BE FOLLOWED IN CLASSIFICATION DTD. 21/09/1980.

EXT.P.10: COPY OF THE METHODS OF MEASUREMENT AND EVALUATION OF DEFECTS IN TIMBER.

RESPONDENT'S EXHIBITS: NIL.

//TRUE COPY//

prv.

ANTONY DOMINIC, J.

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W.P.(C) No.18751 OF 2007
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Dated this the 1st October, 2007

J U D G M E N T

The issue that arises for consideration is whether cancellation of an auction by Exts.P4 and P5 is legal or not?

2. Ext.P1 Tender Notice was issued by the 2nd respondent inviting tender in respect of various types of timber in the different depots of the Department of Forests, including the Government Timber Depot, Achankovil in Kollam District, scheduling the same to 25.04.2007. Being a timber merchant, petitioner participated in the auction held and was the successful bidder in respect of 25 lots of teak and 3 lots of Punna. On settlement of the auction, in compliance with the conditions of sale, petitioner remitted 1/5th of the bid amount and Exts.P2 and P3 are the receipts acknowledging payment. However, while awaiting order of confirmation of the auction, Ext.P4 communication was received informing the petitioner that the auction held at the Government Timber Depot, Achankovil on 25.04.2007 has been canceled. He made enquiries when it was revealed that based on Ext.P6 report of the 2nd respondent, Ext.P5 order was issued by the 1st respondent directing cancellation of the auction. Petitioner has produced Ext.P7, copy of a complaint received by the control room of the 1st respondent in regard to the auction held on 25.04.2007. Ext.P8 is a letter issued by the then Divisional Forest Officer, requesting the 4th respondent to confirm the instruction of the Hon'ble Minister for Forests

to cancel the auction in question.

3. Petitioner would allege that the cancellation of auction by Exts.P4 and P5 are illegal, arbitrary and vitiated by malafides. According to him Ext.P5 is based entirely on Ext.P6 report and that a reading of Ext.P6 report reveals that no procedural irregularity has been found in respect of the auction in question. It is also alleged that the political party in power, made demands from contractors and that it was on account of their inability to satisfy such demands that the auction was cancelled. He also raises a plea that the 1st respondent had no authority to issue Ext.P5 and that usually the order of confirmations/ cancellation is made by the respective Conservator of Forests. It is also his contention that no reason is stated in Ext.P5 as to why the 1st respondent had stepped into the shoes of the 4th respondent. Further, it is also alleged that in issuing Ets.P4 and P5, natural justice has been violated.

4. On behalf of the 4th respondent a statement has been filed. It is alleged that though the petitioner was the highest bidder in respect of some of the lots, the auction was not confirmed in his favour nor has the department entered into any contract with the petitioner. It is contended that the petitioner has no legal right to insist that the timber in question should be sold to him or that the sale should be confirmed. It is alleged that the writ petition is apparently filed on behalf of the then DFO, who has retired on superannuation on 30.04.2007 and that the documents attached to the writ petition are copies available in the DFO's office, which are inaccessible to the petitioner and that the petitioner had not even applied for copies under the provisions of the Right to Information Act.

5. It is stated that the Government had received

various complaints regarding the improper classification of timber sold in the auction and hence the 4th respondent had given instruction to the DFO not to conduct the auction pending verification by higher authorities. According to the 4th respondent despite the instructions given at about 10 p.m. on 24.04.2007, and 10 a.m. on 25.04.2007, ignoring the same, the DFO had conducted auction scheduled on 25.05.2007.

6. It is stated that a preliminary verification in the depot was conducted on 27th and 28th of May 2007 when it was revealed that high quality teak logs qualifying for Class B, were classified as Class C. The 2nd respondent had sent a report to the Government on 30.07.2007 and it was on that report, the auction was directed to be cancelled. According to the respondent if the auction was confirmed, the timber would not have fetched the price it should have and therefore the cancellation was in public interest.

7. The Learned Government Pleader also filed a comparative table indicating the sale proceeds as I.A. No. 13035 of 2007. This indicates that in the auction held on 25.04.2007, for 841.558 m^3 the total amount realized by the department was Rs.3,11,41,329/-. It is also shown that in the subsequent auctions held on 22.06.2007 and 22.08.2007, the total quantity sold was 779.777 m^3 and the total amount realized was Rs.3,13,38,249/-. Therefore, while leaving a balance of 61.681 m^3 to be sold, the respondents have already realized an excess amount of Rs.1,96,920/-. The attempt of the respondents, obviously is to indicate that by cancelling and re-auctioning the timber, they have realized a substantially higher amount.

8. Essentially what calls for a decision in this case is the correctness of Exts.P4 and P5 by which the auction has been cancelled. At this stage, before anything else, I should examine whether petitioner has any legal right to

insist that the auction shall not be confirmed. Ext.P1 is only a notice inviting bids, which is only an offer made by the 1st respondent.

9. Auction in pursuance to Ext.P1 can result in a concluded contract only when sale is confirmed and the procedure in this behalf is completed. In this case, though the petitioner was the highest bidder, it is admitted that sale was not confirmed in his favour nor has the Department entered into any agreement with the petitioner. Therefore, the position is that there is no concluded contract in his favour. If that be so, if the respondents have decided to cancel the auction, petitioner cannot be heard to complain that by the said decision any of his legal right is affected.

10. The further question that arise is whether the respondents were justified in cancelling the auction. Records would show that complaints were received alleging irregularities in the classification of timber. In the statement it is also averred, without contradiction by the then DFO, that prior to the auction the DFO was instructed to cancel the auction and that it was ignoring the same the auction was held. It is also evident that on the instruction of the 1st respondent, verification was held and Ext.P6 is the report submitted. In Ext.P6 it is confirmed that in the auction held procedural formalities have been complied with. But it is stated that regarding the classification of the timber reverification is necessary. It is acting upon Ext.P6 report that Ext.P7 order was issued by the 1st respondent. If there was such a material indicating irregularity in the matter of classification of the timber in question, on which depends the value realized in the auction, I do not see anything irregular in the decision of the respondents to cancel the auction.

11. Petitioner complains that the 1st respondent had

no jurisdiction to issue Ext.P1 and that the Minister concerned had intervened in the matter. True it is the 1st respondent which has issued Ext.P5. Apart from stating that confirmation/ cancellation are usually on the orders of the concerned Conservator of Forests, the petitioner has not produced any material to conclude that the 1st respondent lacked jurisdiction to issue an order in the nature of Ext.P5. Even otherwise, I do not see any subsistence in this contention. If the Government had received complaints alleging irregularity in the auction, it being the custodian of the resources of the state, is certainly entitled to issue orders and thus prevent irregularities. Similarly, if on receipt of a complaint, the Minister in charge of the department issues an order not to proceed with the auction, I cannot see any absence of jurisdiction in such a step, especially when there is nothing to prove any malafides on his part.

12. In a matter like this, question is whether public interest deserves interference with the action of the authorities. It is settled law that in the award of contracts or in finalizing tenders, the court has to be guided by public interest and interference with decisions taken by the authorities is permissible only if public interest warrants it and not on the making of a legal point. In this case, the fact that public interest has been safeguarded is evident from the figures supplied by the Learned Government Pleader through I.A.No.13035 of 2007 which shows that even as of now, 779.777 m3 is remaining to be sold whereas the department has already realized Rs.1,96,920/- in excess of what was realized by them while disposing of the whole of 841.558 m3 timber. That apart the auction having been held against the instruction of the government, the respondents were justified in interfering in the matter.

13. Thus, on an overall consideration of the issue, I am satisfied that the petitioner has not made out a case of interference. Writ petition fails and is dismissed.

ANTONY DOMINIC, JUDGE

pr/jan.